

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 5	CCRB Case #: 201201255	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 01/27/2012 10:50 PM	Location of Incident: 1500 Thieriot Avenue	Precinct: 43	18 Mo. SOL 7/27/2013	EO SOL 7/27/2013	
Date/Time CV Reported Sat, 01/28/2012 1:01 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 01/28/2012 1:01 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edwin Espinal	09609	934831	043 PCT
2. POM Jeffrey Zambrano	06596	936012	043 PCT
3. POM Ralph Gurr	02042	944625	043 PCT
4. POM Anthony Adamo	18775	940949	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Blake Blake	03485	927932	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edwin Espinal	Abuse: PO Edwin Espinal drew his gun.	
B.POM Edwin Espinal	Force: PO Edwin Espinal used physical force against § 87(2)(b)	
C.POM Edwin Espinal	Force: PO Edwin Espinal struck § 87(2)(b) with a blunt instrument.	
D.POM Ralph Gurr	Force: PO Ralph Gurr used physical force against § 87(2)(b)	
E.POM Anthony Adamo	Force: PO Anthony Adamo used physical force against § 87(2)(b)	
F.POM Jeffrey Zambrano	Force: PO Jeffrey Zambrano used physical force against § 87(2)(b)	
G.POM Jeffrey Zambrano	Force: PO Jeffrey Zambrano used pepper spray against § 87(2)(b)	

Case Summary

On January 28, 2012, § 87(2)(b) filed a complaint via the Call Processing System in regards to the arrest of her son § 87(2)(b) (Encl. 4A-B). § 87(2)(b) did not witness the incident.

At approximately 10:50 p.m. on January 27, 2012, PO Edwin Espinal arrested § 87(2)(b) at 1500 Thieriot Avenue in the Bronx. The following allegations resulted:

- **Allegation A – Abuse of Authority – PO Edwin Espinal drew his gun.**

§ 87(2)(g)

- **Allegation B – Force – PO Edwin Espinal used physical force against § 87(2)(b)**
- **Allegation C – Force – PO Edwin Espinal struck § 87(2)(b) with a blunt instrument.**
- **Allegation D – Force – PO Ralph Gurr used physical force against § 87(2)(b)**
- **Allegation E – Force – PO Anthony Adamo used physical force against § 87(2)(b)**
- **Allegation F – Force – PO Jeffrey Zambrano used physical force against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

- **Allegation G – Force – PO Jeffrey Zambrano used pepper-spray against § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

Results of Investigation

Civilian Statement(s)

Victim: § 87(2)(b)

- § 87(2)(b) § 87(2)(b) *old at time of the incident, is a 6'0" tall, 160 pound black male with black hair and brown eyes. At the time of his interview,* § 87(2)(b)

Statements to Medical Providers

According to the narrative in the ACR filed for his treatment on § 87(2)(b) (Encl. 5A), § 87(2)(b) informed EMS that he was feeling pain in his face. § 87(2)(b) denied having had loss of consciousness or any spinal injuries. According to his medical records from § 87(2)(b) on § 87(2)(b) (Encl. 5B-C), § 87(2)(b) reported that that he had been chased by officers and that, when he stopped, he was kicked in the face, chest, and arm and hit in the face with a flashlight.

CCRB Testimony

On March 9, 2012, § 87(2)(b) was interviewed at the CCRB (Encl. 5E-I). His statement was largely consistent with his telephone statement, provided on February 28, 2012 (Encl. 5D). Any inconsistencies have been noted below.

At approximately 10:30 p.m. on January 27, 2012, § 87(2)(b) exited his apartment building, located at § 87(2)(b) in the Bronx, which stands between § 87(2)(b) (Encl. 3A). To the south of § 87(2)(b)'s building, towards Archer Street, are a bar, a Chinese restaurant, a Laundromat, and a liquor store. He was not in possession of marijuana.

§ 87(2)(b) met up with a friend and went into the Chinese restaurant to order some food. While waiting for his food, § 87(2)(b) walked down White Plains Road and joined a group of acquaintances in front of the liquor store. Besides himself and his friend, there were 6 other individuals, 4 males and 2 females. A disagreement that “got loud” ensued between the males in the group and the females. A marked car with two uniformed officers, identified via the investigation as PO Jeffrey Zambrano and PO Edwin Espinal of the 43rd Precinct, pulled up beside the group. The officers remained in the car and PO Zambrano told the group to move. The females left § 87(2)(b) and the other males walked back up White Plains Road and stood in front of the Chinese restaurant and the bar. The marked car continued driving and turned at the next corner.

Approximately seven minutes later, § 87(2)(b) saw the same marked car that had pulled up earlier driving along White Plains Road again. The officers parked the car along White Plains Road but remained inside the marked car. § 87(2)(b) and the other males remained standing in front of the Chinese restaurant and the bar. After approximately five minutes of sitting inside the marked car, PO Zambrano and PO Espinal exited and approached § 87(2)(b) and the other males. As the officers approached § 87(2)(b) and his companions, PO Zambrano said, “Don’t move, take your hands out of your pockets.” § 87(2)(b) stated that his hands were not in his pockets at this time but he was unsure if any of the other individuals had their hands in their pocket. § 87(2)(b) stated that the manner in which the officers approached them made him feel nervous and “jumpy.” § 87(2)(b) stated that he had been in court about a week prior to this incident for jumping a subway turnstile and the judge had told him to stay out of trouble. Because of what the judge had told him, and believing that PO Zambrano and PO Espinal may be approaching to arrest them for “no reason,” § 87(2)(b) began running. § 87(2)(b) ran towards the intersection of Archer Street and White Plains Road. § 87(2)(b) turned the corner onto Archer Street and continued running.

When he reached the intersection of Thieriot Avenue and Archer Street, § 87(2)(b) turned onto Thieriot Avenue. The entrance of the building located at the northeast corner of Archer Street and Thieriot Avenue, 1500 Thieriot Avenue, points towards Thieriot Avenue (Encl. 3C-E). § 87(2)(b) described 1500 Thieriot Avenue as having a courtyard and a recessed front door at the back of the courtyard. There is a small, gated garden on either sides of the courtyard. The grounds of the gardens are dirt and grass but the ground of the rest of the courtyard is concrete. The courtyard was dark so § 87(2)(b) decided to hide in one of the gardens. There were no lights in the courtyard or at the entrance of 1500 Thieriot. The closest sources of light were the streetlights on the sidewalk, approximately 30 feet from where § 87(2)(b) was hiding.

After approximately 5 minutes of hiding, § 87(2)(b) saw a marked car drive past 1500 Thieriot Avenue. A few seconds, § 87(2)(b) saw PO Espinal walking into the courtyard, holding a flashlight in one hand and a gun in the other. PO Espinal had his hands together in front of him, with both the gun and flashlight pointed forward. When he saw PO Espinal, § 87(2)(b) stretched out his body and laid flatly and still on the ground of the garden, face down and facing away from the street. Shortly thereafter, PO Espinal shined his flashlight on § 87(2)(b) and said to him, “Don’t move.” § 87(2)(b) remained still and said to the officer, “Okay, I won’t move, I’m clean.” PO Espinal approached § 87(2)(b) from behind and said to him, “Give me your hand.” § 87(2)(b) turned onto his side and raised his right arm up towards PO Espinal. PO Espinal holstered both his gun and his flashlight. PO Espinal grabbed § 87(2)(b)’s arm with his right hand, and then immediately punched § 87(2)(b) in his left eye with his left hand. § 87(2)(b) pulled his right arm back down and attempted to use it to hold his eye because of the pain. When he did this, PO Espinal said to § 87(2)(b) “Stop Resisting.” § 87(2)(b) stated that, besides pulling his arm to cover his eye, he had not resisted in any way.

PO Espinal grabbed § 87(2)(b)'s arms and pulled them away from his eye and behind his back. § 87(2)(b) afraid that PO Espinal might punch him again, pulled his arms away from PO Espinal and brought them up to cover his face again. At this time he felt a hard metal strike him in the middle of his face, around the area of his nose and lips. In his telephone statement, § 87(2)(b) alleged that PO Espinal struck him with a flashlight. However, in his sworn statement, § 87(2)(b) explained that he did not see the object that struck him but presumed that it was a flashlight because he had seen the flashlight in PO Espinal's hand as he had approached him initially. § 87(2)(b) continued to struggle with PO Espinal because he wanted to prevent PO Espinal from striking him again. PO Espinal repeatedly attempted to grab § 87(2)(b)'s arms but § 87(2)(b) maneuvered his arms and body to prevent PO Espinal from being able to grab him. At some point PO Espinal took out his radio and said into it, "The kid is resisting, I need backup." § 87(2)(b) § 87(2)(b) denied having swung his arms or kicked his legs and denied having struck PO Espinal during their struggle.

Approximately three minutes after PO Espinal made the call for backup, two more uniformed officers, identified via the investigation as PO Anthony Adamo and PO Ralph Gurr of the 43rd Precinct, responded. § 87(2)(b) stated that, because the courtyard was dark and because he was on the ground for the whole time, he could not describe the additional officers who responded. Once the additional officers arrived, § 87(2)(b) began to feel several kicks and punches on his torso and rib and at least one on his face. He estimated that he was struck approximately 15 times. § 87(2)(b) also felt his face being pepper-sprayed approximately four to six times. He could not see the officer(s) who sprayed him or kicked and punched him. While he was being kicked and pepper-sprayed, § 87(2)(b) repeatedly moved his body, hands, and head in order to dodge and protect himself and he was coughing as a result of the pepper-sprays. § 87(2)(b) attempted to press his face against the ground to avoid the pepper-sprays but he felt a hand grab his head and lift it up and then he was sprayed again. § 87(2)(b) began coughing again as a result of the pepper-spray and lifted his head. At this time he felt a kick to the back of his head. This kick caused his head to go downwards, causing his teeth and face to strike the curb of concrete at the edge of garden. At this point § 87(2)(b) lost consciousness.

When § 87(2)(b) regained consciousness the officers had stopped beating him and he was in handcuffs. An ambulance with two EMT's arrived at the scene. § 87(2)(b) had been lying on the ground with his handcuffed hands underneath his body, causing him pain in his wrists. The ambulance, escorted by PO Zambrano took § 87(2)(b) to § 87(2)(b). At the hospital § 87(2)(b) observed PO Zambrano's name on his badge and PO Zambrano provided PO Espinal's name to him. § 87(2)(b) stated that he suffered several injuries as a result of the force used against him by the officers. His facial bone and several of his teeth were fractured as a result of the officer kicking him in the back of his head, causing his teeth to strike the concrete. He also suffered a fracture in his wrist, which he believed was caused by the force used in handcuffing him and the fact that the officers had him lying on the ground on top of his wrists for so long after he was handcuffed. He had swelling on his ribs as a result of the kicks to his ribs. He also had scrapes on his face, arms, and knees. § 87(2)(b) was x-rayed and his teeth and jaw were wired.

Photographs

§ 87(2)(b)'s arrest photograph (Encl. 5V) appears to show him with swollen lips and nose and a cut on the bridge between his lips and his nose. He also appears to have a wide bruise on the right side of his face, directly below his right eye.

During his CCRB interview, a photograph was taken of § 87(2)(b)'s teeth (Encl. 5L), which appeared to show a healed crack across his upper front teeth.

Following his CCRB interview, § 87(2)(b) provided a set of 8 photographs (Encl. 5M-P), which he stated were taken on January 29, 2012, immediately after he was released. The photographs, taken of § 87(2)(b)

§ 87(2)(b)'s face from several angles and distances, appear to show several bruises on his nose, lips, and on the right side of his face.

Notice of Claim

§ 87(2)(b)'s Notice of Claim, filed on April 2, 2012 (Encl. 5S-U), alleged that he was "assaulted, beaten, punched, struck, falsely and wrongly arrested by Police Officer Espinal and various other Police Officers from the 43rd Precinct." § 87(2)(b) sustained physical trauma to the head, face, ribs, fractured teeth and psychological suffering.

NYPD Statement(s):

Subject Officer: PO EDWIN ESPINAL

- *PO Espinal* § 87(2)(b) .
- *PO Espinal worked from 3:00 p.m. on January 27, 2012, to 6:35 a.m. on January 28, 2012. PO Espinal was assigned to patrol sector J in the 43rd Precinct with PO Jeffrey Zambrano. PO Espinal was dressed in uniform and assigned to marked RMP # 3302.*

Memo Book

PO Espinal's memo book entries from January 27, 2012 (Encl. 6M-Q), note that, at 10:00 p.m., he received a radio report of shots fired at 1579 Thieriot Avenue. At 10:05 p.m., PO Espinal performed a vertical patrol at 1580 Thieriot Avenue. At 10:15 p.m. he made a "10-90" unfounded radio report in regards to 1579 and 1580 Thieriot Avenue. At 10:26 p.m., PO Espinal pursued a male on foot who had committed disorderly conduct in front of 1503 White Plains Road. The individual threw an object during the pursuit, which was later found to be a Ziploc bag of marijuana. The individual was apprehended at 1500 Thieriot Avenue. At 10:50 p.m., PO Espinal arrested § 87(2)(b) and an ambulance was called for him.

Summons

PO Espinal issued summons # § 87(2)(b)-2 (Encl. 6R) to § 87(2)(b) for Disorderly Conduct, Penal Law Section 240.20.6, for a violation which occurred in front of 1503 White Plains Road at 10:26 p.m. on January 27, 2012.

OLBS Arrest Report

Complaint Report

Voucher

Arrest report number B12608272 (Encl. 6T-W) and its corresponding complaint report (Encl. 6S) and vouchers (Encl. 6X-AA) all provide a consistent account of this incident. The narratives in the arrest report and complaint report state that § 87(2)(b) was observed in possession of a quantity of marijuana in "open view of the public." § 87(2)(b) then resisted arrest by struggling with PO Espinal by flailing his arms, kicking, holding his arms to his chest, and refusing to be handcuffed. Two vouchers were filed for § 87(2)(b)'s arrest. They first voucher (Encl. 6X-Y) lists a clear Ziploc bag containing green vegetative marijuana. The voucher notes that PO Espinal recovered the listed item from the ground, where he had observed § 87(2)(b) throw it. The second voucher (Encl. 6Z-AA) lists § 87(2)(b)'s cellphone, a battery, a SIM card, and a Micro SD memory card. The voucher notes that the listed property was returned to § 87(2)(b) on February 8, 2012.

CCRB Testimony

PO Edwin Espinal was interviewed at the CCRB on August 8, 2012 (Encl. 6BB-EE). PO Espinal testified that, sometime during their tour on January 27, 2012, he and PO Zambrano saw a group of several males and females hanging out in front of a liquor store located on White Plains Road. Some of the members of this group appeared to be drinking alcoholic beverages. Amongst this group was a male whom PO Espinal later

identified as § 87(2)(b). According to PO Espinal, large groups of individuals frequently loiter in front of the liquor store, drinking in public and impeding pedestrian traffic on the sidewalk. PO Espinal approached this group and told them to disperse. The group appeared to heed PO Espinal's instructions and was dispersing as he and PO Zambrano left.

At approximately 10:00 p.m., PO Espinal and PO Zambrano received a radio run regarding shots fired in the vicinity of 1579 Thieriot Avenue. PO Espinal and PO Zambrano responded to the location and conducted a vertical patrol in 1580 Thieriot Avenue but found no evidence of shots having been fired. As they canvassed the area, the officers came across an unidentified, possibly Hispanic, male in a vehicle double-parked in front of 1580 Thieriot Avenue. PO Espinal did not recall whether this individual beckoned him or whether he approached the individual. The individual wanted to remain anonymous but informed the officers that he had heard what might have been gunshots and had seen a group of approximately 5 or 6 individuals run from 1580 Thieriot Avenue southbound on Archer Street and made a turn towards White Plains Road. As the officers continued to canvass the area and follow the path described by the anonymous witness, PO Espinal and PO Zambrano saw § 87(2)(b) talking to a group of approximately five unidentified adult male individuals, in front of another store only a few stores away from the liquor store from whence PO Espinal had earlier dispersed the first group. Furthermore, based on the information given to PO Espinal by the anonymous witness, PO Espinal suspected that this group might have been the group that had run from 1580 Thieriot Avenue and may have known something about the alleged shooting.

PO Espinal approached § 87(2)(b) and the group with the intent to issue a summons for disorderly conduct for not having dispersed while also suspecting that these individuals were possibly involved in the reported shooting. As soon as PO Espinal exited his car, § 87(2)(b) ran. § 87(2)(b) ran southbound along White Plains Road, towards Archer Street. As he ran, § 87(2)(b) appeared to be holding the front part of his waistband with one of his hands. PO Espinal did not recall which hand § 87(2)(b) was using to hold his waistband. PO Espinal could not see what, if anything, § 87(2)(b) was holding since he was behind him, but believed, from the angle that § 87(2)(b) held his arm and the stillness of his arm as he ran, that he was holding an object.

PO Espinal pursued § 87(2)(b) on foot. PO Espinal stated that he could not estimate the distance that was between he and § 87(2)(b) at any given time. § 87(2)(b) ran southbound on White Plains Road, then westbound on Archer Street. § 87(2)(b) ran across Archer Street to the southern side, and then back onto the northern side. At some point in the pursuit, PO Espinal was unsure where, he observed § 87(2)(b) remove his hand from his waistband and throw what appeared to be a small black bag. PO Espinal could not see what was in the black bag but it appeared to be about the size and material of a plastic shopping bag. When the black bag hit the ground, PO Espinal heard a "clanging" sound, consistent with what PO Espinal thought might be the sound a gun would make. § 87(2)(b) continued running after throwing the bag and PO Espinal followed him. § 87(2)(b) ran along Archer Street and made a right onto Thieriot Avenue.

Once on Thieriot Avenue, § 87(2)(b) ran into the gardened courtyard in front of the first building on the corner, 1500 Thieriot Avenue. As § 87(2)(b) ran into the courtyard, PO Espinal observed him throw another object into some of the bushes in the garden. At the time that § 87(2)(b) threw the object, PO Espinal could not tell what the object was but, after § 87(2)(b)'s arrest, he found the object and identified it as a bag of marijuana. § 87(2)(b) ran to the back of the courtyard in front of 1500 Thieriot Avenue and attempted to hide behind an iron fence by lying on the ground on his chest in a "push-up" position with his hands by his waist. PO Espinal approached § 87(2)(b) with his gun drawn shouting, "Let me see your hands, let me see your hands!" PO Espinal stated that he had his gun drawn because he had a suspicion that § 87(2)(b) may have been involved in an earlier shooting, and though he may have thrown away a gun earlier, he may have still been in possession of another weapon. § 87(2)(b) replied, "You got my hands, you got my hands," and drew his hands up, towards his upper body.

PO Espinal approached § 87(2)(b) and holstered his gun. As PO Espinal attempted to grab his hands to handcuff him, § 87(2)(b) pulled his hands underneath his body. PO Espinal attempted to pull his arms back and handcuff § 87(2)(b) but was unable to do so. § 87(2)(b) said repeatedly during the attempt to arrest him, “Fuck you, I didn’t do anything.”

PO Espinal was unable to handcuff § 87(2)(b) and made a call for additional assistance. Several officers, including PO Zambrano, responded. PO Espinal could not recall which or how many other officers, besides PO Zambrano, responded or the point in which they arrived. As the officers attempted to pull § 87(2)(b)'s arms and handcuff him, he made several attempts to push himself up from the ground. PO Espinal stated that § 87(2)(b) who was still lying on his chest, attempted to push himself up in this manner at least two times with his hands while the officers were attempting to handcuff him. Each time, the officers used their body weights to push him back down to the ground. In this process, PO Espinal saw § 87(2)(b)'s face hit the ground, which was concrete, on both occasions. PO Espinal believed that this resulted in lacerations to § 87(2)(b)'s face. PO Espinal stated that § 87(2)(b)'s face striking the ground was not an intentional action by the officers but was an incidental result of them attempting to hold him down and handcuff him.

As § 87(2)(b) continued to resist, PO Espinal warned § 87(2)(b) that he would spray him with pepper-spray if he did not stop resisting arrest. PO Espinal removed his pepper-spray and prepared to spray § 87(2)(b). At that same moment, § 87(2)(b) swung one of his arms out from under his body. PO Espinal dropped his pepper-spray and attempted to lock § 87(2)(b)'s arm while it was free. Another officer, PO Espinal could not see which one, then picked up PO Espinal's pepper-spray and sprayed it into § 87(2)(b)'s face.

Eventually the officers were able to subdue § 87(2)(b) and handcuff him. PO Espinal did not recall whether or not he punched § 87(2)(b) during the arrest, but stated that he did not kick § 87(2)(b) or hit § 87(2)(b) with a flashlight, gun, or any other blunt object. PO Espinal stated that he did not see any other police officer punch or kick § 87(2)(b) or hit him with an object. After § 87(2)(b) was cuffed, PO Espinal saw that Sgt. Blake was on scene. PO Espinal did not know whether Sgt. Blake arrived before or after § 87(2)(b) was subdued. PO Espinal saw that § 87(2)(b) had several lacerations on his face, which were bleeding badly, so PO Espinal recommended to Sgt. Blake that § 87(2)(b) be taken to § 87(2)(b). An ambulance arrived and § 87(2)(b) was placed into it and taken to § 87(2)(b). After § 87(2)(b) was taken to the hospital, PO Espinal searched the bushes in the courtyard of 1500 Thieriot Avenue and recovered a Ziploc-sized bag of marijuana that he believed § 87(2)(b) had thrown as he entered the courtyard. PO Espinal retraced the steps of the initial chase but he was unable to recover the black bag or the object inside the black bag that PO Espinal saw § 87(2)(b) throw away during the pursuit.

Subject Officer: PO JEFFREY ZAMBRANO

- *PO Zambrano, § 87(2)(b)*
- *PO Zambrano worked from 3:00 p.m. on January 27, 2012, to 8:10 a.m. on January 28, 2012. He was assigned to sector J in the 43rd Precinct with PO Edwin Espinal. He was in uniform and assigned to marked RMP #3302.*

Memo Book

PO Zambrano's memo book entries from January 27, 2012 (Encl. 6F-I) note that, at 10:00 p.m., he received a radio report of a dispute involving a firearm at 1579 Thieriot Avenue. At 10:15 p.m., PO Zambrano performed a vertical patrol at 1580 Thieriot Avenue. At 10:26 p.m., PO Espinal pursued a male on foot who had committed disorderly conduct. PO Zambrano followed PO Espinal, but lost sight of him during the pursuit. PO Espinal put a call out over the radio stating that the male had last been seen at 1500 Thieriot

Avenue. At 10:35 p.m., PO Zambrano resumed patrol at Thieriot Avenue. There, he saw the male resisting arrest first by flailing his arms, then by holding his arms to his chest. PO Zambrano maced the male. The male was then taken to § 87(2)(b). At 10:50 p.m., PO Espinal made an arrest.

CCRB Testimony

On July 11, 2012, PO Jeffrey Zambrano was interviewed at the CCRB (Encl. 6J-L). At approximately 9:45 p.m. on January 27, 2012, PO Zambrano and PO Espinal were performing a patrol in the vicinity of the intersection of White Plains Road and Archer Street in the Bronx. PO Zambrano and PO Espinal observed a crowd of approximately five or six young men outside a liquor store on White Plains Road. Some of the young men in the crowd had cups of alcohol that they attempted to hide when the officers passed by. PO Zambrano told the group to disperse, and then continued on his patrol.

About half an hour later, PO Zambrano received a report of a dispute involving firearms over the radio in the vicinity of 1580 Thieriot Avenue. PO Zambrano and PO Espinal responded to the location. They performed a vertical patrol of 1580 Thieriot Avenue, finding nothing. After exiting the building, an individual who claimed to have witnessed the dispute approached PO Zambrano and PO Espinal and told them that a group of young men nearby may have been involved in the dispute.

The group of young men indicated by the anonymous witness turned out to be the same group that had been told to disperse. The group had not left its location outside the liquor store. As soon as PO Zambrano and PO Espinal stopped their vehicle and exited, before they had had any interactions with the group, a male from the group, later identified as § 87(2)(b), ran away from the officers and the group. § 87(2)(b) turned at the corner of White Plains Road and Archer Street and ran down Archer Street. PO Espinal chased after § 87(2)(b) on foot while PO Zambrano returned to the patrol car vehicle. PO Zambrano quickly lost sight of § 87(2)(b) and PO Espinal. After approximately two or three minutes of driving around the neighborhood, PO Zambrano heard PO Espinal over the radio, giving his location as 1500 Thieriot Avenue.

When he arrived at 1500 Thieriot Avenue, PO Zambrano found PO Espinal struggling with § 87(2)(b) on the ground near a metal gate in the courtyard. PO Zambrano exited the vehicle and moved to assist his partner. The officers attempted to handcuff § 87(2)(b) but were unable to overcome his resistance. § 87(2)(b) lying on his stomach, clutched his hands to his chest and repeatedly attempted to push himself up off the ground with his arms. When § 87(2)(b) would attempt to push himself off the ground, the weight of the two officers on top of him would cause him to fall quickly back down. PO Zambrano observed § 87(2)(b)'s face strike the ground and the metal gate "pretty hard" at least once when he was pushed back down as he was trying to get up. PO Zambrano stated that § 87(2)(b)'s head was not pushed intentionally against the ground by an officer and denied that an officer kicked him in the back of the head. As they struggled with § 87(2)(b) PO Zambrano observed PO Espinal's pepper-spray on the ground. PO Zambrano picked up the pepper-spray and told § 87(2)(b) that if he did not stop resisting, he would be sprayed. § 87(2)(b) continued his resistance so PO Zambrano sprayed him once, aiming for the side of his face.

During their attempt to subdue § 87(2)(b) additional officers began to arrive at 1500 Thieriot Avenue. PO Zambrano could not specifically recall who these officers were or how many of them there were. Some of the newly arrived officers moved to assist PO Espinal in subduing § 87(2)(b). PO Espinal shouted out that he had seen § 87(2)(b) throw something away during the pursuit. PO Zambrano stopped assisting in the arrest of § 87(2)(b) and began searched the area around 1500 Thieriot Avenue for the object § 87(2)(b) had allegedly thrown. He searched for approximately one minute, but was unable to find anything. PO Zambrano then returned to 1500 Thieriot Avenue. Officers were still trying to subdue § 87(2)(b). PO Zambrano joined the officers in the struggle to handcuff § 87(2)(b) who was still

kicking his legs and refusing to give up his hands. Eventually, the officers managed to gain control of § 87(2)(b) and handcuff him.

After the struggle, PO Espinal left 1500 Thieriot Avenue to search for the object he had seen § 87(2)(b) throw during the chase. He returned shortly after with a bag of marijuana that he stated § 87(2)(b) had disposed of during the chase. Sgt. Blake arrived at the location at some point after § 87(2)(b) had already been handcuffed. During the struggle to handcuff § 87(2)(b) PO Zambrano did not strike § 87(2)(b) with a flashlight or any other hard object and did not observe PO Espinal or any other officers do so. PO Zambrano did not punch or kick § 87(2)(b) and did not observe any other officer do so. PO Zambrano did not observe any officers beside himself use pepper-spray against § 87(2)(b). § 87(2)(b) never appeared to lose consciousness or go limp during the incident. After § 87(2)(b) was handcuffed, PO Zambrano observed blood on his face but could not tell from where § 87(2)(b) was bleeding. PO Zambrano called for an ambulance for § 87(2)(b). Once it arrived, PO Zambrano escorted § 87(2)(b) into the ambulance. PO Zambrano escorted the ambulance to § 87(2)(b) where § 87(2)(b) was treated for broken teeth. PO Zambrano did not know how § 87(2)(b) received that injury but speculated that it may have been caused by § 87(2)(b)'s face striking the ground or the metal gate as he and PO Espinal pushed him back down as he tried to get up.

Subject Officer: PO ANTHONY ADAMO

- PO Adamo, § 87(2)(b)
- PO Adamo worked from 3:00 p.m. on January 27, 2012, to 1:35 a.m. on January 28, 2012. PO Adamo was assigned to patrol sector K in the 43rd Precinct with PO Ralph Gurr. PO Adamo was dressed in uniform and assigned to a marked RMP # 4664.

Memo Book

PO Adamo's memo book entries from January 27, 2012 (Encl. 6FF-HH) note that, at an unnoted time, he responded to a "10-85" call for assistance. At an unnoted time, PO Adamo went to § 87(2)(b) in regards to the "10-85" call. At 1:10 a.m. he returned to the 43rd Precinct stationhouse.

CCRB Testimony

PO Anthony Adamo was interviewed at the CCRB on August 21, 2012 (Encl. 6II-JJ). PO Adamo testified that, on January 27, 2012, he and PO Gurr responded to a call for assistance by an officer at 1500 Thieriot Avenue. As they arrived at the scene, PO Adamo saw two individuals struggling in the dark entryway of the building. As PO Adamo approached the two figures, he observed that it was PO Espinal attempting to restrain an individual, who was later identified as § 87(2)(b). PO Adamo noticed that PO Espinal was having a difficult time as § 87(2)(b) was flailing his arms and kicking his legs. PO Adamo joined PO Espinal and both attempted to hold § 87(2)(b)'s arms and cuff them. PO Adamo unsuccessfully attempted grab § 87(2)(b)'s right arm as § 87(2)(b) kept trying to push himself upward and kept his arms near his chest. Both PO Espinal and PO Adamo repeatedly shouted at § 87(2)(b) to "stop resisting" and "put your hands behind your back." PO Adamo recalled that § 87(2)(b)'s face struck the ground in the course of the struggle as a result of officers pushing him back down as he attempted to get up. At some point during the arrest PO Adamo began choking from the effects of pepper-spray, but was unaware of who discharged it or when it was used. PO Adamo did not specifically recall which other officers, besides himself and PO Espinal, were involved in subduing § 87(2)(b) but recalled that it took four officers to subdue him. PO Adamo did not punch, kick, or strike § 87(2)(b) with a hard object and did not see any other officer do so. After § 87(2)(b) was handcuffed, an ambulance was called. PO Adamo was then taken to § 87(2)(b) for exposure to blood due to the fact that there was blood on him, possibly from § 87(2)(b) or from another officer.

Subject Officer: PO RALPH GURR

- PO Gurr, § 87(2)(b) .
- PO Gurr worked from 3:00 p.m. on January 27, 2012, to 1:35 a.m. on January 28, 2012. PO Gurr was assigned to patrol sector K in the 43rd Precinct with PO Anthony Adamo. PO Gurr was dressed in uniform and assigned to a marked RMP # 4664.

Memo Book

PO Gurr's memo book entries from January 27, 2012 (Encl. 6KK-NN) note that, at an 10:26 p.m., he received to a "10-85" call for assistance at 1500 Thieriot Avenue. At 10:28 p.m. he arrived at the location. At 10:50 p.m., PO Gurr escorted an officer to § 87(2)(b)

CCRB Testimony

PO Ralph Gurr was interviewed at the CCRB on August 21, 2012 (Encl. 6OO-PP). PO Gurr testified that on January 27, 2012, at approximately 10:26 pm, he and PO Adamo responded to a call for assistance by another officer at 1500 Thieriot Avenue. When they arrived at the scene PO Gurr saw PO Espinal attempting to apprehend an individual in a dark area near the entrance of the building. PO Adamo, then PO Gurr, exited their vehicle and approached PO Espinal and the individual, who was identified as § 87(2)(b) . § 87(2)(b) was resisting by kicking his legs. PO Espinal and PO Adamo repeatedly told § 87(2)(b) to stop resisting but he continued to do so. PO Zambrano, who also arrived at the scene at some point, also repeatedly told § 87(2)(b) to stop resisting. PO Gurr remained by § 87(2)(b)'s legs and attempted to hold down his legs to prevent him from kicking the other officers, who were attempted to restrain and cuff § 87(2)(b)'s arms. PO Gurr did not punch, kick, or strike § 87(2)(b) with a hard object and did not see any other officer do so. PO Gurr did not use pepper-spray against § 87(2)(b) . § 87(2)(b) was not aware of any other officer having discharged pepper-spray. PO Gurr did not see § 87(2)(b)'s head or face strike the ground, did not see him lose consciousness at any point, and did not see injuries on § 87(2)(b) after he was handcuffed. PO Gurr immediately escorted PO Adamo to the hospital for injuries that were unknown to him.

Witness Officer: SGT. BLAKE BLAKE

- Sgt. Blake, § 87(2)(b) .
- Sgt. Blake worked from 3:00 p.m. on January 27, 2012, to 12:07 a.m. on January 28, 2012. He was in uniform and assigned as a patrol supervisor in the 43rd Precinct with PO James Jacobberger in a marked RMP.

Memo Book

Sgt. Blake's memo book entries from January 27, 2012 (Encl. 6A-C), note that at 10:31 p.m., sector 43J made a call for assistance (10-85) from 1500 Thieriot Avenue. At 10:50 p.m. one individual was placed under arrest by sector 43J.

CCRB Testimony

On June 20, 2012, Sgt. Blake was interviewed at the CCRB (Encl. 6D-E). He testified that, approximately 5 to 10 minutes before 10:30 p.m. on January 27, 2012, a shots fired call was sent over the radio. To Sgt. Blake's knowledge, PO Espinal and PO Zambrano responded to this call. Sgt. Blake did not respond to this call and didn't recall the location of the shots fired call. At approximately 10:30 p.m. a "10-85" call for assistance was made over the radio by PO Espinal regarding a foot pursuit. PO Espinal provided his location as 1500 Thieriot Avenue.

Approximately 5 minutes after the "10-85" call was made, Sgt. Blake arrived at 1500 Thieriot Avenue. Sgt. Blake observed approximately 3 to 4 marked cars already at the scene. Sgt. Blake observed an individual, later identified as § 87(2)(b) lying on the ground in handcuffs. § 87(2)(b) appeared to be bleeding from his mouth and chin. § 87(2)(b) was already in handcuffs and bleeding when Sgt. Blake arrived and Sgt. Blake did not know what caused his injuries. Sgt. Blake did not see officers kick or punch

§ 87(2)(b) use pepper-spray against him, or strike him with any blunt objects. He did not see any officers strike him in the face or the back of his head. He did not see § 87(2)(b)'s face or head strike the ground or any objects and did not see anything occur to § 87(2)(b) that would have caused a fracture of his teeth or facial bone.

Sgt. Blake discussed the situation with PO Espinal, who informed Sgt. Blake that, when he and PO Zambrano responded to the shots fired call, a witness pointed out a group to them. PO Espinal stated that, when they approached the group, § 87(2)(b) made a motion that led PO Espinal to believe that he may have had a gun, and then ran. The officers proceeded to chase after § 87(2)(b). PO Espinal reported that, as they chased § 87(2)(b) threw two bags. One bag made a metallic clang when it landed, but the bag was never found. The second bag, which was eventually recovered by officers, contained marijuana. PO Espinal informed Sgt. Blake that they ultimately caught up to and apprehended § 87(2)(b) at 1500 Thieriot Avenue.

Medical Records

The Pre-Hospital Care Report filed by EMS for the treatment of § 87(2)(b) on § 87(2)(b) (Encl. 7A-D), § 87(2)(b)'s facial wound was washed and dressed and a cold compress was applied. EMS provided a presumptive diagnosis of soft tissue injury resulting from secondary blunt force. He was transported to § 87(2)(b).

§ 87(2)(b)'s medical records from § 87(2)(b) for his treatment on § 87(2)(b) and § 87(2)(b), (Encl. 7E-KK) indicate that his physical examination revealed bruises to his face, hands, and right knee. It also revealed swelling of his upper lip and bleeding from his mouth. § 87(2)(b) denied loss of consciousness, dizziness, nausea, or vomiting. § 87(2)(b) was diagnosed with fractures of 5 of his teeth (#7, 8, 9, 25, and 26). The teeth were splintered with orthopedic wire. He was prescribed Amoxicillin and Percocet. X-rays of his § 87(2)(b)'s chest and pelvis showed unremarkable results and revealed no fractures or dislocations. X-rays of § 87(2)(b)'s left wrist, forearm, and elbow revealed mild soft tissue swelling in his wrist but revealed no fracture or dislocation in his wrist, forearm, or elbow. A CT Scan of § 87(2)(b)'s head and facial bones revealed no intracranial injury but revealed soft tissue deformity beneath § 87(2)(b)'s chin and comminuted non-displaced fractures of the right front side of § 87(2)(b)'s upper alveolar ridge (cheekbone), extending to his maxillary (jaw) wall.

On February 7, 2012, § 87(2)(b) went to § 87(2)(b) (Encl. 7LL-WW) for follow-up treatment. The medical records from § 87(2)(b) are consistent with the records from § 87(2)(b) as to § 87(2)(b)'s diagnosis. Two of § 87(2)(b)'s teeth were bonded with composite. He was scheduled to return for weekly evaluations. § 87(2)(b) returned on § 87(2)(b). He was examined on the first two occasions and on the third occasion the orthopedic wire splintering § 87(2)(b)'s teeth were removed.

NYPD Document(s)

SPRINTs

- SPRINT # § 87(2)(b) (Encl. 8A) notes that at 9:58 p.m. on January 27, 2012, a male caller called 911 and reported 6 shots fired from the roof of 1579 Thieriot Avenue. At 10:03 p.m. Sector 47J conducted a vertical patrol at 1580 Thieriot Avenue. At 10:14 p.m., Sector 43K, Sector 43B, a 43rd Precinct Patrol Supervisor, and a 43rd Precinct foot post all reported the report as unfounded.
- SPRINT # § 87(2)(b) (Encl. 8B) notes that at 10:27 p.m. Sector 43K and a 43rd Precinct Patrol Supervisor arrived at 1500 Thieriot Avenue. At 10:34 p.m. EMS was requested to the location. At 10:37 p.m. Sector

43J reported an arrest. At 10:44 p.m. EMS arrived at the location. At 10:50 p.m., Sector 43K reported that it was transporting an officer to § 87(2)(b) for exposure to blood while arresting an individual.

Roll Call

- The 43rd Precinct tour 3 roll call for January 27, 2012 (Encl. 8C-J) indicates that the patrol supervisor was Sgt. Blake, PO Gurr and PO Adamo were assigned to sector K, and PO Espinal and PO Zambrano were assigned to sector J.

Summons/Arrest for Incident and Disposition

- On October 1, 2012, § 87(2)(b) pleaded guilty to disorderly conduct and received a fine of \$75.00 (Encl. 9A-D).

Status of Civil Proceedings

- § 87(2)(b) filed a Notice of Claim with the City of New York on April 2, 2012, claiming pain, emotional and psychological suffering and seeking ten million dollars as redress (Encl. 5S-U). As per the New York City Law Department, a 50-H hearing was held on § 87(2)(b). § 87(2)(b)'s attorney, § 87(2)(b), has not responded to three messages left with his firm in regards to obtaining a copy of the 50-H transcript.
- As of August 29, 2012, over 3 months after the 90 day filing deadline, no Notice of Claim has been filed with the City of New York with regard to the incident by § 87(2)(b) (Encl. 11B).

Civilian(s) Criminal History

- § 87(2)(b)
§ 87(2)(b)
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■ § 87(2)(b)

Civilian(s) CCRB History

- This is the first CCRB complaint involving § 87(2)(b) or § 87(2)(b) (Encl. 2F-G).

Subject Officer(s) CCRB History

- PO Edwin Espinal has been a member of the service for eight years and there are no substantiated CCRB allegations against him (Encl. 2A-B).
- PO Jeffrey Zambrano has been a member of the service for eight years and there are no substantiated CCRB allegations against him (Encl. 2C).
- PO Ralph Gurr has been a member of the service for five years and there are no substantiated CCRB allegations against him (Encl. 2D).
- PO Anthony Adamo has been a member of the service for six years and there is one substantiated CCRB allegations against him (Encl. 2E):
 - In CCRB case number 200814663, a question allegation was substantiated against PO Adamo. He received instructions.

Conclusion

Identification of Subject Officer(s)

- § 87(2)(b) obtained the names of PO Zambrano and PO Espinal during the incident and provided them to the CCRB. PO Zambrano and PO Espinal's statements were consistent with that of § 87(2)(b) as to each officer's role in this incident. § 87(2)(b) specifically alleged that PO Espinal drew his gun as he searched for him, punched him in the face, and then struck him with an unidentified blunt object. He also alleged that multiple officers, whom he could not see, punched and kicked him and sprayed him with pepper-spray. Both officers, along with PO Gurr and PO Adamo acknowledged struggling with § 87(2)(b) in order to handcuff § 87(2)(b). PO Zambrano acknowledged using pepper-spray against § 87(2)(b). PO Espinal could not recall whether he punched § 87(2)(b) at any point and all four officers denied having kicked him or having struck him with a blunt object. PO Espinal, PO Zambrano, and PO Adamo acknowledged forcibly pushing § 87(2)(b) to the ground multiple times as he repeatedly attempted to get up as they were attempting to handcuff him. Physical Force allegations have been pleaded against all four officers, a gun drawn allegation has been pleaded against PO Espinal, and a pepper-spray allegation has been pleaded against PO Zambrano.

Allegations not Pleaded

- It is undisputed that § 87(2)(b) congregated with a "loud" group and did not disperse when instructed to do so. He received a disorderly conduct summons, to which he pleaded guilty in court, in regards this action. A stop allegation was therefore not pleaded in regards to the officers' initial pursuit of him.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority – PO Edwin Espinal drew his gun.

PO Espinal stated that, as he searched for § 87(2)(b) he drew his gun due to the fact that, at that moment, he possessed a suspicion that § 87(2)(b) may have been armed due to the fact that they were conducting an investigation regarding a shots fired call and that § 87(2)(b) had thrown an object that he suspected may have been a firearm.

NYPD v. Gliner, OATH Index No. 955/00 (Sept. 6, 2000) (Encl. 1A-S) established a broad standard for the acceptable drawing and point of a firearm, stating that an officer is allowed to do so as long as he or she has a reasonable fear for his or her own or another person's safety.

§ 87(2)(g)

Allegation B – Force – PO Edwin Espinal used physical force against § 87(2)(b)

Allegation C – Force – PO Edwin Espinal struck § 87(2)(b) with a blunt instrument.

Allegation D – Force – PO Ralph Gurr used physical force against § 87(2)(b)

Allegation E – Force – PO Anthony Adamo used physical force against § 87(2)(b)

Allegation F – Force – PO Jeffrey Zambrano used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b)'s head struck the ground during this incident. Both § 87(2)(b) and the officers attributed this as the likely cause of the fractures of his teeth and bones in his face. It is also undisputed that § 87(2)(b) resisted the officers attempts to handcuff him. It is undisputed that some level of physical force was used to overcome his resistance. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that, as PO Espinal approached him, PO Espinal asked for his hands. As § 87(2)(b) raised his hand to PO Espinal, PO Espinal punched him in the face. § 87(2)(b) pulled his hands away and covered his face. He stated that, from this time on, PO Espinal, and later, other officers, attempted to pull his arms behind his back but he struggled with them and refused to give them his hands because he was afraid of being hit again. He stated that, during the struggle, PO Espinal struck him in the head with a blunt object and an unidentified officer kicked him in the back of the head, causing his head to strike the ground, causing fractures of his face and his teeth.

PO Espinal stated that when he found § 87(2)(b) refused to let his arms be cuffed and hid them beneath his body prior to the use of any physical force against. He stated that he did not recall whether or not he punched § 87(2)(b) at some point but denied having struck him with a blunt object or having kicked him. PO Espinal, PO Zambrano, and PO Adamo acknowledged forcibly pushing § 87(2)(b) to the ground multiple times as he repeatedly attempted to get up as they were attempting to handcuff him. All of the officers involved in the arrest denied having kicked § 87(2)(b) or having struck him with a blunt object. They attributed § 87(2)(b)'s injuries to his head striking the ground whenever they pushed back to the ground as he attempted to get up.

Penal Law Section 35.30 (Encl. 1Z-AA) authorizes the use of physical force by police officers to overcome resistance in the course of effecting an arrest. Deadly physical force, however, is only justified when a perpetrator is armed with a firearm, has committed burglary, kidnapping, arson, or escape in the first degree, or the officer reasonably believes that the perpetrator is about to use deadly physical force. While baton strikes to the arms and legs are generally considered regular use of physical force, a strike to the head with a blunt object is considered use of deadly physical force. NYPD v. Bolusi, OATH Index No. 583/92 (June 5, 1992) (Encl. 1BB-QQ).

§ 87(2)(b), § 87(2)(g)

Allegation G – Force – PO Jeffrey Zambrano used pepper-spray against § 87(2)(b)

It is undisputed that PO Zambrano used pepper-spray against § 87(2)(b) and that this occurred while § 87(2)(b) resisted arrest.

Penal Law Section 35.30 (Encl. 1Z-AA) and Patrol Guide section 203-11 (Encl. 1T-U) hold that officers are allowed to use physical force to overcome resistance in the course of effecting an arrest. Patrol Guide section 212-95 (Encl. 1V-Y) posits the use of pepper-spray as physical force and indicates that “it should be regarded as a possible alternative to [physical] force and restraint, where practical.”

§ 87(2)(b), § 87(2)(g)

Team: 5

Investigator:	_____	<u>Alexander Opoku-Agyemang</u>	<u>December 31, 2012</u>
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date